

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Monique West	Team: Squad #2	CCRB Case #: 201502424	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 03/22/2015 1:50 AM	Location of Incident: Euclid Avenue train station	Precinct: 75	18 Mo. SOL 9/22/2016	EO SOL 9/22/2016	
Date/Time CV Reported Wed, 04/01/2015 11:29 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 04/01/2015 2:39 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DTS Keith Arce	04563	921929	ESS 07
2. DTS Robert Schierenbeck	07814	923130	ESS 07
3. POM Francesco Iorio	05463	956763	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Anthony Donaldson	08286	941671	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.DTS Robert Schierenbeck	Abuse: Det. Robert Schierenbeck stopped § 87(2)(b)	
B.DTS Robert Schierenbeck	Abuse: Det. Robert Schierenbeck searched § 87(2)(b)	
C.DTS Keith Arce	Discourtesy: Det. Keith Arce spoke rudely to § 87(2)(b)	
D.DTS Robert Schierenbeck	Discourtesy: Det. Robert Schierenbeck spoke rudely to § 87(2)(b)	
E.DTS Keith Arce	Force: Det. Keith Arce used physical force against § 87(2)(b)	
F.DTS Robert Schierenbeck	Force: Det. Robert Schierenbeck used physical force against § 87(2)(b)	
G.DTS Keith Arce	Abuse: Det. Keith Arce refused to provide his shield number to § 87(2)(b)	
H.DTS Robert Schierenbeck	Abuse: Det. Robert Schierenbeck refused to provide his shield number to § 87(2)(b)	
I.POM Francesco Iorio	Discourtesy: PO Francesco Iorio spoke rudely to § 87(2)(b)	

### Case Summary

On March 22, 2015, at approximately 1:50 a.m., Det. Robert Schierenbeck stopped § 87(2)(b) inside of the Euclid Avenue train station on the A and C train lines in Brooklyn (**allegation A**). During their interaction, Det. Schierenbeck searched § 87(2)(b) (**allegations B**). Det. Arce and Det. Schierenbeck allegedly spoke rudely to § 87(2)(b) (**allegations C and D**). While he was being brought up the stairs in handcuffs, Det. Arce and Det. Schierenbeck allegedly punched him in his abdomen multiple times (**allegations E and F**). Det. Arce and Det. Schierenbeck allegedly refused to provide their shield numbers to him (**allegations G and H**). After being placed in a patrol car for escort to the stationhouse, his arresting officer, PO Francesco Iorio of the 75<sup>th</sup> Precinct, allegedly spoke rudely to § 87(2)(b) (**allegation I**). § 87(2)(b) was arrested for § 87(2)(b) (Board Review 01).

### Video Footage



201502424\_20150925\_1641\_DM.mp4



201502424\_20150925\_1714\_DM.mp4

### Mediation, Civil and Criminal Histories

- Mediation was offered to but rejected by § 87(2)(b)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- § 87(2)(b) has filed a Notice of Claim with the City of New York claiming false arrest and assault and seeking one million dollars as redress (Board Review 02).

### Civilian and Officer CCRB Histories

- This is the only CCRB complaint filed by and involving § 87(2)(b) (Board Review 03).
- Det. Schierenbeck has been a member of the NYPD for 16 years, has had five previous CCRB allegations involving four cases with no substantiated allegations. § 87(2)(g)
- Det. Arce has been a member of the NYPD for 16 years, has had three previous CCRB allegations involving two cases with no substantiated allegations. § 87(2)(g)
- This is the first CCRB complaint against PO Iorio during his one year tenure with the NYPD (see officer history).

### Findings and Recommendations

#### Explanation of Subject Officer Identification

§ 87(2)(b) identified the officer who sat in the back seat with him and told him to “shut the fuck up” as PO Iorio from the name plate on his uniform. PO Iorio admitted to being the officer who sat in the backseat with § 87(2)(b) as he was transported to the stationhouse.

§ 87(2)(g)

**Allegation A- Abuse of Authority: Det. Robert Schierenbeck stopped § 87(2)(b)**

It is undisputed that Det. Schierenbeck stopped § 87(2)(b). § 87(2)(b) stated that he sprinted from his home, two blocks, to the Euclid Avenue train station on his way to meet his wife who had just been pickpocketed in Manhattan. When he arrived at the train station, he swiped his Metro Card and was leaning into the turnstiles to enter the station when he was grabbed by Det. Schierenbeck and Det. Arce (Board Review 04).

Det. Schierenbeck stated that he and Det. Arce were conducting a routine patrol when an officer called, “gang portable” over the radio. The officer sounded as if he was running. Within approximately 30 seconds, the officer came back over the radio, breathing heavily, and announced that he needed no further units to respond. The officer never announced his location and no other calls came over the radio regarding a possible crime. As he and Det. Arce approached the intersection of Fountain Avenue and Sutter Avenue, they noticed an unmarked police car and a marked police car make an abrupt turn heading southbound on Fountain Avenue. The vehicles stopped on the corner. As Det. Arce and Det. Schierenbeck continued through the intersection, they saw § 87(2)(b) running from the confines of the Cypress Hills Houses east on Sutter Avenue and then make a turn, heading north on Euclid Avenue. Det. Schierenbeck and Det. Arce followed him because they were not sure whether a crime had been committed in that area and were monitoring the radio. Det. Schierenbeck stated that the abrupt turn made by the unmarked and marked police cars, the radio transmission prior to that and § 87(2)(b)'s location in a high crime area gave them reasonable suspicion that § 87(2)(b) was involved in something that needed further investigation which is why they followed him. They intended to follow him to see where he went, question him about whether he saw something and to monitor the radio to see if anything else came over. § 87(2)(b) continued north on Euclid Avenue, zigzagging from one side of the street to the other at a full sprint. When he was approximately 25 yards from the train station, he slowed down to a walk. When he turned around and noticed them, he sprinted into the train station. Det. Schierenbeck got out of their vehicle and followed § 87(2)(b) into the station to question him to see if he knew about anything that was going on. He believed that there was a possibility that he might be involved in a crime. When Det. Schierenbeck got down to the station, § 87(2)(b) was already through the turnstiles. Det. Schierenbeck yelled for him to stop and approached him. He intended to question him, ID him and to bring him back upstairs to hold him for an investigation into whether he was involved in the earlier transmission (Board Review 05).

Det. Arce stated that he heard an officer call for additional units over the radio but did not hear did not hear anything further come over the radio afterwards. Det. Arce stated that there were civilians outside where the two police cars went but everything looked clear. He did not see any officers dealing with any individuals and had no idea what was going on. When he saw § 87(2)(b) running, he assumed that he was involved in the call for additional units because he was in the vicinity and was running in the opposite direction. They followed with the intent of seeing where he was going, stopping him and questioning him in regards to the call for additional officers. At Pitkin and Euclid Avenue, he slowed down to a walk until Det. Schierenbeck yelled, “Excuse me.” § 87(2)(b) turned around, looked at them and made a right turn, running into the train station. Det. Schierenbeck got out of the truck and followed him. Det. Arce stayed behind to park the truck before running down approximately 10 seconds later (Board Review 06).

§ 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

An officer may stop an individual when he reasonably suspects that the person has committed, is committing, or is about to commit a crime. People v. De Bour, 40 N.Y.2d 210 (1976). Innocuous behavior, even in a high crime area, does not provide reasonable suspicion. People v. Hampton, 200 A.D.2d 466 (1<sup>st</sup> Dept., 1994). Flight alone, or even in conjunction with equivocal circumstances that might justify a police request for information, is insufficient to justify pursuit, as individuals can refuse to respond to police inquiry. People v. Holmes, 81 N.Y.2d 1056 (1993) (Board Review 08).

§ 87(2)(g)

**Allegation B- Abuse of Authority: Det. Robert Schierenbeck searched § 87(2)(b)**

It is undisputed that Det. Schierenbeck searched § 87(2)(b)

Although § 87(2)(b) did not make this allegation, video footage from an MTA surveillance camera shows that Det. Schierenbeck approached § 87(2)(b) and immediately lifted his sweater to search his waistband area. Det. Schierenbeck removes something from § 87(2)(b)'s left waistband area before continuing to lift his sweater, searching his front and rear waistband area (see video footage, Board Review 09).

§ 87(2)(b) did not see an officer search § 87(2)(b) (Board Review 10).

Det. Schierenbeck initially stated that as § 87(2)(b) gave him his driver's license, he observed the clip of something silver in § 87(2)(b)'s left pocket. Det. Schierenbeck stated that when he first observed it, he was not able to tell what it was and removed it for his safety. The object turned out to be a multi-tool which Det. Schierenbeck stated is legal to carry. After the video footage was shown to Det. Schierenbeck stated that he lifted § 87(2)(b)'s shirt to check for a possible weapon. He was not searching for a specific weapon and there was nothing that led him to believe that § 87(2)(b) had a weapon on him. He frisked him for his safety. His legal representative added that this was in addition to the factors that led to the stop and Det. Schierenbeck agreed.

Det. Arce had no independent recollection of Det. Schierenbeck searching § 87(2)(b). The call for additional units caused him to fear for his safety. He stated that the fact that they feared for their safety would have been a reason to frisk him. He did not see any bulges on § 87(2)(b) prior to the stop, as he ran, because he was too far in front of them.

Patrol Guide Procedure 212 -11 states that a search is justifiable if a frisk reveals an object which may be a weapon. An officer may frisk a person when they have reasonable suspicion that the person is armed. People v. DeBour, 40 N.Y.2d 210, 215 (1976) (Board Review 08).

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

**Allegation C- Discourtesy: Det. Keith Arce spoke rudely to § 87(2)(b)**

**Allegation D-Discourtesy: Det. Robert Schierenbeck spoke rudely to § 87(2)(b)**

§ 87(2)(b) alleged that the officers informed him after stopping him that he fit the description of someone who had just committed an armed robbery. When § 87(2)(b) suggested that they only stopped him because they saw an African American man running at night, Det. Arce allegedly replied, “You’re a smartass.” When § 87(2)(b) attempted to explain why he was running, Det. Arce allegedly told him to “shut the fuck up.” After the officers grabbed him to place him in handcuffs, he yelled at them, asking if this was the best collar they could get and explained that his wife was in trouble. Both officers allegedly told him to, “shut the fuck up” and called him a “piece of shit.” Once he was outside, he yelled for bystanders to record the encounter. As they began to record, Det. Arce whispered in his ears, “You’re a fucking piece of shit. We hope your wife gets killed.”

§ 87(2)(b) was unable to hear anything the officers said to § 87(2)(b).

Det. Schierenbeck stated that neither he nor Det. Arce used profanity. Det. Arce corroborated this.

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation E- Force: Det. Keith Arce used physical force against § 87(2)(b)**

**Allegation F- Force: Det. Robert Schierenbeck used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that after he told Det. Arce to shut the fuck up in response to being told to “shut the fuck up,” Det. Arce grabbed his shoulder and threw him against the turnstile, causing his abdomen to hit the turnstile. Det. Schierenbeck then grabbed his arms and together they placed his hands behind his back. Then officers then threw him against the station booth, causing his torso to hit the booth. § 87(2)(b) was not sure whether they handcuffed him after placing him against the turnstile or the station booth. Once he was handcuffed, the officers forcefully pulled him out of the station and up the stairs, causing him to trip. § 87(2)(b) had not been resisting and walked willingly up the stairs. As § 87(2)(b) was brought up the stairs, the officers allegedly punched him multiple times in his abdomen. He assumed both officers punched

him because he felt blows come from both sides. He could not estimate how many times they punched him. He further alleged that officers threw him against the fence outside of the train station in the same manner that he was thrown against the turnstile and the booth.

§ 87(2)(b) stated that the officers pulled § 87(2)(b) out of the turnstiles by his waist and brought him upstairs. He did not watch the officers bring him up the stairs and did not see any officers punch § 87(2)(b).

Video footage shows the officers pull § 87(2)(b) out of the turnstiles by his arms and place him against the booth. The amount of force they used to do so is not apparent from the video. There is no video footage of the officers taking § 87(2)(b) up the stairs.

Det. Arce stated that he and Det. Schierenbeck pulled § 87(2)(b) out of the turnstiles by his arms and placed him against the booth. They then pushed him up the stairs by his arms and his legs when he resisted. They did not punch him or use any additional force against him. Det. Schierenbeck corroborated this.

§ 87(2)(g)

**Allegation G- Abuse of Authority: Det. Keith Arce refused to provide his shield number to**

§ 87(2)(b)

**Allegation H- Abuse of Authority: Det. Robert Schierenbeck refused to provide his shield number to**

§ 87(2)(b)

§ 87(2)(b) stated that after additional units arrived, he asked Det. Arce and Det. Schierenbeck to verbally state and write down their shield numbers for him. He alleged that Det. Arce and Det. Schierenbeck did not respond, covered their shields and turned their backs.

Det. Arce stated that § 87(2)(b) did not ask him or Det. Schierenbeck for their names or shield numbers and they did not purposely conceal with information. Det. Schierenbeck corroborated his statement.

Neither PO Iorio nor PO Donaldson heard § 87(2)(b) ask Det. Arce or Det. Schierenbeck for their names or shield numbers (Board Review 11 and 12).

§ 87(2)(g)

**Allegation I- Discourtesy: PO Francesco Iorio spoke rudely to**

§ 87(2)(b)

§ 87(2)(b) stated that while he was in the patrol car being transported to the 75<sup>th</sup> Precinct stationhouse, he told PO Iorio that he had the chance to do the right thing and stop this from happening. PO Iorio allegedly said, “Shut the fuck up. I have no control over this. They want you to go to jail so you’re going to go to jail.”

PO Iorio denied telling § 87(2)(b) to “shut the fuck up” or using any profanity towards § 87(2)(b). PO Donaldson, the operator of the vehicle, corroborated this.

§ 87(2)(g)

Squad: 2

Investigator:	_____	_____	_____
	Signature	Print	Date

Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date

Attorney:	_____	_____	_____
	Title/Signature	Print	Date